IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
WRIT PETITION NO.2992 OF 1997

Shri Rahul Laxman Patil
residing at 149, Ganesh
Lane, Worli, Mumbai-24. .... Petitioner

- Versus -

1. State of Maharashtra
(through its Secretary,
Tribal Development Dept.,
Mantralaya, Mumbai -
400 032.

2. Chairman,
Committee for Scrutiny
Verification of Tribe
Claims, Maharashtra
State, 28, Queen's
Garden, Pune-411 001.

3. Executive Director,
Mumbai Refinery,
Hindustan Petrolium Corpo-
ration Ltd., Refinery
Division, Chembur,
Mumbai.

4. Hindustan Petrolium Corpo-
ration Ltd., Chembur,
Mumbai. .... Respondents

Shri P.C. Kansara for the Petitioner.

Shri C.R. Sonawane, Asst. Government
Pleader, for the Respondent Nos.1 & 2.

Shri Sanjay Udeshi for the Respondent
Nos.3 and 4.

CORAM: R.M.S. KHANDEPARKAR &
Mrs. ROSHAN DALVI, JJ.

DATED: APRIL 13, 2006

JUDGMENT (Per R.M.S. Khandeparkar, J.):

1. Heard. By the present petition the petitioner is seeking to quash the order dated 10-3-1997 issued by the respondent No.2 and to seek declaration that the petitioner belongs to the "Mahadev Koli", Scheduled Tribe.

2. The services of the petitioner with the respondent No.4 were sought to be terminated under the letter dated 6-1-1997 pursuant to invalidation of the caste certificate of the petitioner by the respondent No.2 by its order dated 23-12-1996. Both the said orders were sought to be challenged by the petitioner in Writ Petition No.150 of 1997. The said writ petition came to be allowed by this Court by its order dated 21-1-1997 and the respondent No.2 was directed to reassess the petitioner’s Tribe claim after taking into consideration the further evidence which was sought to be produced by the petitioner, with the further observation that since the respondent No.4 had terminated the services of the petitioner only on the ground that the petitioner had failed to establish his Tribe claim, in case the respondent No.2 finds the Tribe claim of the petitioner to be true, then the petitioner should be taken back in the service. The petitioner accordingly produced the further documents before the Scrutiny Committee and after hearing the petitioner, the respondent No.2 again invalidated the petitioner’s Tribe claim certificate by

its order dated 10-3-1997. Being aggrieved, the petitioner has preferred the present petition.

3. It is the contention of the petitioner that the Scrutiny Committee erred in coming to the conclusion that the caste certificate issued by the Addl. Chief Presidency Magistrate, Mumbai to the father of the petitioner was itself invalid. According to the petitioner, the entire approach by the Scrutiny Committee in the matter of assessment of the materials placed on record by the petitioner was totally wrong as the Scrutiny Committee proceeded on the basis that the caste certificate issued to the father of the petitioner was dated 17-5-1958 when in fact the certificate was issued on 17-5-1956. It is also the contention of the petitioner that the Scrutiny Committee did not consider all the materials on record in proper perspective and improperly rejected the Tribe claim of the petitioner.

4. While assailing the impugned order, the learned Advocate for the petitioner submitted that the decision of the Scrutiny Committee ex facie shows non-application of mind by the Members of the Committee while determining the Tribe claim of the petitioner. The "Mahadev Koli" Tribe to which the petitioner belongs to, was given constitutional protection by the Presidential Order of 1950 and the same came into force from

6-9-1950. The Presidential Order of 1956, by which the area restrictions were imposed, came into force from 1-11-1956 and therefore the Addl. Chief Presidency Magistrate, Mumbai was competent enough to issue the Tribe claim certificate to the petitioner's father on 17-5-1956. The Scrutiny Committee, therefore, on the assumption that the certificate is dated 17-5-1958, could not have rejected the claim of the petitioner. He further submitted that plain reading of the decision of the Scrutiny Committee would reveal that the Committee proceeded to analyse the materials on record on the basis that the petitioner had approached the Committee with a false certificate issued in favour of his father. The entire approach of the Committee, therefore, was wrong. Besides that, the Committee had failed to take note of the materials on record in proper perspective. On the other hand, the learned A.G.P. has submitted that the Committee, after due consideration of the materials on record, has held that the petitioner had failed to establish his Tribe claim. Even though the finding of the Committee as regards the caste certificate in favour of the father of the petitioner may be held to be incorrect, the Committee has taken pains to go through all the other documents on record, as also the traditional occupation of the petitioner's family, the deity of the family, surname of the relatives, family traditions and all the other things

which are required to be taken into consideration while verifying the caste/Tribe claim of a candidate. Being so, according to the learned Advocates for the respondents, there is no scope to find fault with the decision of the Scrutiny Committee on the point of the Tribe claim of the petitioner.

5. In the course of the hearing of the matter, the learned Advocate for the petitioner had produced for our perusal the original certificate issued by the Addl. Chief Presidency Magistrate, Mumbai and it apparently disclosed that the same was issued on 17-5-1956 and not on 17-5-1958. In the circumstances, it is not understood as to how the Scrutiny Committee could have held the certificate in favour of the petitioner's father was issued by the Addl. Chief Presidency Magistrate, Mumbai on 17-5-1958. The finding of the Scrutiny Committee on the basis of the said certificate in favour of the petitioner's father, therefore, as rightly submitted by the learned Advocate for the petitioner, discloses total non-application of mind and, therefore, cannot be sustained. It is totally contrary to the materials on record. Undoubtedly, the Presidential Order of 1956 imposing area restrictions came into force from 1-11-1956. Obviously therefore, prior to 30-10-1956 and from the time of issuance of the Presidential Order of 1950 i.e. 6-9-1950, the Chief

Presidency Magistrate was duly empowered to issue caste certificate and accordingly it was issued to the father of the petitioner on 17-5-1956. The Scrutiny Committee, therefore, was not justified in discarding the said certificate on the ground that the same was issued on 17-5-1958.

6. The next point which therefore arises is whether on consideration of the said certificate, the decision of the Committee could have been different from the one which is arrived at in the matter. Undoubtedly, if the father of the candidate is proved to be belonging to a particular caste or Tribe, obviously that would be the caste of the candidate. The caste of the son cannot be different from the one of his father. Being so, if the certificate of the petitioner's father issued by the Addl. Chief Presidency Magistrate, Mumbai on 17-5-1956 was to be accepted as a conclusive proof of the petitioner's father's Tribe, certainly the decision of the Committee would have been different. It would be, therefore, necessary to analyse the said certificate.

7. The certificate dated 17-5-1956, issued by the Addl. Chief Presidency Magistrate, Mumbai, apparently discloses that the same was issued on the basis of the following documents:

(A) The application filed by the father of the petitioner requesting for the Tribe certificate.

(B) The certificate stated to have been issued by one Dr. M.N. Birje, J.P. & Hon. Presidency Magistrate, Bombay.

(C) The certificate from the Akhil Koli Samaj Parishad, Bombay.

(D) A statement sworn by the petitioner's father to be belonging to Mahadev Koli.

Apparently therefore, the certificate was based solely on the claim of the petitioner's father accompanied by two certificates - one from the Hon. Presidency Magistrate, Bombay and another from the Akhil Koli Samaj Parishad, Bombay. The certificate on the face of it nowhere discloses any verification having been done by the concerned authority about the genuineness of those two certificates. The certificate also does not disclose as to whether the issuing authority had verified about the truthfulness of the contents of those two certificates. Apparently, the certificate is a mere endorsement of the Tribe claim of the petitioner's father and the so called the two certificates, one by the Hon. Presidency Magistrate, Bombay and the another

of the Akhil Koli Samaj Parishad, Bombay. Obviously therefore, the so called certificate of 17-5-1956 did not carry any evidentiary value thereto. The certificate on the face of it also did not disclose as to on what basis the certificate by the Hon. Presidency Magistrate and/or the Akhil Koli Samaj Parishad were issued.

8. It is pertinent to note that the school leaving certificate which was issued to the father of the petitioner on 9-1-1958 confirming that the petitioner's father had joined the school on 17-12-1936 and had left the school on 20-4-1943 discloses that he belonged to the "Koli" caste. Attention was sought to be drawn to the certificate stated to have been issued by the Assistant Commissioner of Income-tax in respect of the caste of the petitioner's father having been recorded in the service book of the Income-tax Department that it discloses "Mahadev Koli" and the entry to that effect was made on 24-1-1958. Obviously the said entry was made on the basis of the certificate issued by the Addl. Chief Presidency Magistrate, Mumbai ignoring the caste of the petitioner's father recorded in the school leaving certificate.

9. Upon the analysis of the other materials which are placed before the Scrutiny Committee and the information

gathered by the Scrutiny Committee in the course of the hearing of the matter, it has been observed by the Scrutiny Committee in its decision dated 10-3-1997 that, the native place of the petitioner’s family is Sheva Koliwada, Taluka Uran, District Raigad; their traditional occupation is agriculture and fishery; their family deities are Satva Devi, Golphadeo and Chededeo; the surnames of their relatives include Nakhawa, Warlikar, Patil, Bastav and Mendadkar, and their traditional dance is Koli dance. The Committee has specifically recorded that the petitioner and his family members are not aware of Waghbaras, Gaonbaras and Padkai which are the peculiar systems amongst the Mahadev Koli, Scheduled Tribe, besides, their traditional occupation, deities and customs are not related to Mahadev Koli, Scheduled Tribe. It is pertinent to note that the petitioner has not been able to challenge these findings by the Scrutiny Committee. Nothing is placed on record to hold the said findings to be either perverse or contrary to the materials on record. These findings coupled with the fact that the father’s caste was disclosed as "Koli" in his school leaving certificate, which is the oldest document produced by the petitioner, clearly establish that the petitioner had utterly failed to prove his Tribe claim or that he belongs to Mahadev Koli, Scheduled Tribe. In these circumstances, merely because the Scrutiny

Committee has discarded the father's caste certificate issued by the Addl. Chief Presidency Magistrate, Mumbai on the wrong assumption regarding the date of issuance of the said certificate cannot in any manner render the decision of the Scrutiny Committee to be bad in law. Considering the fact that the certificate issued by the Addl. Chief Presidency Magistrate, Mumbai was not based on cogent materials, but was issued absolutely without any application of mind and without ascertaining the genuineness of the claim of the petitioner's father and more so in view of the categorical entry in the said school leaving certificate that he belonged to the Koli caste, certainly no fault can be found with the impugned order.

10. In the circumstances, therefore, it is apparent that the petitioner belongs to the "Koli" caste, to which his father belongs to, and there is absolutely no substance in the claim of the petitioner that he belongs to Mahadev Koli, Scheduled Tribe. It is pertinent to note that the petitioner had second opportunity to produce materials in support of his Tribe claim. However, whatever documentary evidence which was produced by the petitioner, the analysis thereof by the Scrutiny Committee in proper perspective, clearly reveals that the petitioner has utterly failed to establish his Tribe claim.

11. In the circumstances, the petition fails and is hereby dismissed. The rule is discharged with no order as to costs.

(Mrs. Roshan Dalvi, J.) (R.M.S.Khandeparkar, J.)

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